



Juvenile Justice Update

The League of Women Voters of Portland Education Fund
August 2006

Background

The Leagues of Women Voters of Portland and East Multnomah County completed a two-year study of juvenile justice in 1997 titled *Dilemmas in Delinquency*. In October 2003, the two leagues updated the study, reviewing the positions on parental responsibility (Item 5) and on minimum age of waiver to adult court (Item 6). In 2005, the Portland League's board accepted the recommendation to study further the second position because of the results of new scientific research on adolescent brain development.

Neurological Research

New and safe brain scanning technology, including MRI (magnetic resonance imaging), has enabled the tracking of healthy juvenile brains over many years to see how they actually develop. Change continues into the early twenties with the greatest change and development in the frontal lobe (containing the prefrontal cortex), which develops last. According to Daniel R. Weinberger, director of the Clinical Brain Disorders Laboratory at the National Institutes of Health: "To understand what goes wrong in teenagers who fire guns, you have to understand something about the biology of the teenage brain, and the brain of a fifteen-year-old is not mature, particularly in an area called the prefrontal cortex, which is critical to good judgment and the suppression of impulse control... The fifteen-year-old brain does not have the biological machinery to inhibit impulses in the service of long-range planning."¹ Adolescents rely heavily on the amygdala—an instinctual part of the brain—for rational thinking, planning, and understanding of consequences. According to Karl Johnson, Multnomah County juvenile court counselor with the Gang Resource and Intervention Team, adolescents make "emotional decisions" as opposed to "informed decisions".²

When can an adolescent's brain be considered "mature?" Current brain research does not yet allow researchers to answer unequivocally. "The scientific data aren't ready to be used by the judicial system. The hardest thing (for neuroscientists to do) is to bring brain research into real-life contexts."³ Yet Elizabeth Cauffman, researcher and psychologist at the University of Pittsburgh Medical Center—who believes the shift toward making a reasoned decision really starts at seventeen⁴—"fervently hopes the new findings by neuroscientists, combined with similar research by child psychologists and sociologists, will influence recent trends in juvenile justice, where the country is still debating how to deal with young teenage offenders, many of whom are being tried as adults. 'Of course, it depends on what the govern-

ment is willing to hear,' she says. 'But I would hope that, in the end, the law would be more sensitive to these developmental issues'."⁵

Current Position (Item 6)

Youth under the age of 16 should not be subject to automatic waiver to adult court. Fifteen-year-olds should be evaluated for their competency to stand trial before being turned over to the adult court system. Youth under 15 should be assumed incapable of understanding the legal system adequately to stand trial in adult court.

Competence and Cul- pability

The 2003 update noted that one of the effects of Oregon's Measure 11 is that: "In the past, most cases where the court ruled a defendant was in-

competent to stand trial were based on the findings of mental illness or mental retardation. Today, we are facing increasing numbers of adolescents whose age alone raises questions of their intellectual or emotional maturity to stand trial."

A report supported by the MacArthur Foundation, *Youth on Trial*, offers the following: "If youths do not possess the same capacities as adults, should they be held responsible for their behavior in the same way as adults? Again, available evidence suggests not. Emotional and cognitive immaturity, susceptibility to peer pressure, and perceptions and attitudes concerning risk all affect the choices that adolescents make—with the result that many of those choices are less re-

sponsible than those that adults in similar situations would make.”⁶

Judge Elizabeth Welch of the Multnomah County Juvenile Court observes that adolescents do not think in the long term—they can’t. When asked questions relating to their cases, juveniles may answer “yes” or “no”, but frequently they do not comprehend the process or its possible outcomes. They are eager to finish and leave. They and their parents (in the adult court system) often acquiesce to a plea bargain—giving up the opportunity for a trial—without necessarily understanding the language or options, and without consideration of consequences.

Public Safety / Treatment vs. Punishment

In considering the questions of passing judgment on juvenile offenders and whether they should be tried in juvenile or adult courts, the purpose of the handling they are to receive after sentencing / disposition must be considered. Oregon’s 1995 Ballot Measure 11 (translated into statute as Senate Bill 1—SB1) passed in a period of mounting national crime levels and public demand to get tough on crime. The measure called for automatic remand to adult court of juveniles aged 15-17 accused of 24 specified serious crimes and predetermined sentence terms if convicted. It also established that anyone under age 15 *may* be waived to circuit court for prosecution for these crimes.⁷ In subsequent years, juvenile crime levels went down. Many credit this to Measure 11, despite similar decreases in states that did *not* institute such measures sending juveniles to adult court. Also ignored were decreases in the level of unemployment, increases in household income, and other factors tending to reduce crime levels.

An important result of Measure 11 was a transfer of control from judge to district attorney: judges no longer have the discretion to use information about

particular circumstances of the case to influence jurisdiction or sentencing. According to Phil Lemman, deputy director of the Oregon Youth Authority (OYA), “Prosecutors make the waiver decision without a hearing and without statutory criteria...the process changed as well as the decision maker.” Judges no longer decide whether a youth would be better off assigned to a particular program rather than incarcerated, or whether public safety is served better by a youth’s participation in a program instead of in close custody. The district attorney is empowered, through charging a Measure 11 crime or not, to determine where a youth will be adjudicated. Phil Lemman explains, “the vast majority of [juveniles] start their sentence at OYA, and many complete their

entire BM 11 sentence at OYA (because SB 1 increased OYA’s age of jurisdiction up to age 25)”. Some may be transferred to adult prison if they prove unmanageable “or if they have completed the education / treatment at OYA and would benefit more from the vocational opportunities at DOC [Department of Corrections]”. The youth will then have a permanent criminal record (juvenile records are expunged) which will influence employment opportunities for the rest of his life. Circuit Court

Judge Michael Marcus “doubts that Measure 11 sentences reduce crime through deterrence, because he believes most of the target crimes are committed by offenders who do not expect to get caught, lack empathy for their victims, and do not hold values of impulse control typical of non-offenders”. Judge Welch finds that among the laws passed throughout the country in the mid-1990s, “Measure 11 is the *most* punitive and severe in all of the United States”.

Phil Lemman frames the rehabilitation vs. punishment issue by explaining, “I think the proponents and opponents of Measure 11 don’t always speak the same language or debate the same issues....Oregon went from a child welfare model (what is in the best inter-



est of this child) to a public safety model (where child welfare is not the primary consideration).” He continues, “if our primary goal is to reduce future criminal offenses, is it best to incapacitate these offenders by long periods of incarceration or it is through community-based treatment/reformation?”

Norm Frink, chief deputy attorney for Multnomah County, stated that as most crime is committed by males age 15-35, preserving public safety requires that criminals in this age group be incarcerated as long as possible during those years. Yet counselor Karl Johnson believes that by working individually with adolescents, providing them with appropriate treatment and giving them hope, rehabilitation can occur. For him, there is no question that the juvenile system serves young people better than does the adult corrections system. According to the Sentencing Project (a national non-profit organization promoting sentencing reform), “Criminal prosecution of children supplants programs and services that could have a positive impact on crime reduction. The transfer of children to adult court for the purpose of enhancing punishment is an ineffective and expensive substitute for the use of prevention strategies that reduce juvenile violence and problems such as drug abuse, property crimes, and disruptive behavior.”⁸

A 2003 report by the Annie E. Casey Foundation noted, “...recent studies find that youth transferred to adult courts re-offend more often and commit even more serious crimes, than equivalent youth who

remain under the jurisdiction of juvenile courts and correction systems...[they] will have an even harder time finding productive employment, a critical step in turning their lives around.”⁹ The Oregon Youth Authority offers treatment and rehabilitation services, while in the adult prisons there are no programs tailored to youth, and few that include their families. The recidivism rate of OYA graduates is lower than that of prison graduates (although this could be less an affirmation of the effectiveness of OYA programs than an indication that those juveniles sent to adult prison represent a hard core of more violent offenders).¹⁰

Judge Marcus stated that the public wants crime reduction and rehabilitation more than it wants punishment. However, the current system is focused on “just deserts”. He believes it is an easy out for society to say “if you do the crime, you do the time” and not think about the criminal justice

system more broadly. Measure 11 supports this punitive approach, permitting judges no discretion, no second look, no consideration of circumstances or previous record. However, protecting society is important, and simply imprisoning people is inadequate. Treating alcohol and drug addictions, and addressing joblessness, poverty, and other underlying causes of crime, are also social protection. Joanne Fuller, director of the Department of Community Justice for Multnomah County said, “We’ve turned to the criminal justice system to solve complex social problems ... [however] ... it is a blunt tool”.

Proposed Concurrence Statement

Youth under the age of 18 should not be subject to automatic waiver to adult court. Youth under 15 should be assumed incapable of understanding the legal system adequately to stand trial in adult court. All other juveniles should be evaluated for their competency to stand trial before being turned over to the adult court system.

Notes

¹ Daniel R. Weinberger, op-ed piece for the *New York Times*, quoted in *Primal Teen*, p. 114

² Karl Johnson, LWV general meeting, March 14, 2006

³ Science News Online.
www.sciencenews.org/articles.20040508/bob9.asp

⁴ *The Primal Teen*, p. 116

⁵ *Ibid*, p. 212

⁶ *Youth on Trial*, Executive Summary

⁷ “Dilemmas in Delinquency.” League of Women Voters Portland / League of Women Voters East Multnomah County. March 1997.

⁸ Allard, Patricia & Malcolm Young, *Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners*, The Sentencing Project, www.sentencingproject.org

⁹ Nelson, Douglas W. “On Adolescent Crime, Time to End Fad Justice”, Annie E. Casey Foundation, Spring 2003. www.aecf.org/publications/advocasey/spring2003/fad_justice/justice.htm

¹⁰ “Trends in Transfer of Juveniles to Adult Criminal Court”, Florida Department of Juvenile Justice. January 8, 2002, p. 8, asserts “most would agree that there will always be a small subset of youth who by the severity or chronicity of their offenses are best dealt with by the adult system.” www.sentencingproject.org/pdfs/2083.pdf

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Interviews

Norm Frink, chief deputy attorney for Multnomah County, October 17, 2005.

Joanne Fuller, MSW, director, Multnomah County Department of Community Justice, August 30, 2005.

Karl Johnson, counselor, Gang Resource and Intervention Team, Multnomah County Juvenile Court, comments at LWV general meeting, March 14, 2006.

Phil Lemman, deputy director, Oregon Youth Authority, February 2 and April 3, 2006.

Hon. Michael H. Marcus, judge, Multnomah County Circuit Court, March 2, March 15, and April 2, 2006.

Hon. Elizabeth Welch, presiding judge, Multnomah County Juvenile Court, January 31, 2006 and comments at LWV general meeting, March 14, 2006.

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Prepared by the League of Women Voters of Portland

Research and Writing: Shirley Lambelet, Gail Post, Debbie Kaye

Readers: Hon. Michael H. Marcus, Phil Lemman, Nancy Elliott, Wally Blinde (superintendent, North Coast Youth Correctional Facility)

Editing: Carol Cushman, Jeanne Steed, Darleane Lemley

Layout: Heather Drake